

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE MINNESOTA DEPARTMENT OF REVENUE

In the Matter of the Revocation of the  
Sales and Use Tax Permit of Gilbertson &  
Gilbertson, dba Riverfront Pizzeria

**FINDINGS OF FACT, CONCLUSIONS,  
AND RECOMMENDATION**

This matter came on for hearing on May 30, 2003, at 9:30 a.m. in Minneapolis before Allan W. Klein, Administrative Law Judge.

Appearing on behalf of the Minnesota Department of Revenue was Wayne L. Sather, Attorney, Minnesota Department of Revenue, Mail Station 2220, 600 North Robert Street, St. Paul, MN 55146-2220. He was accompanied by James L. Jones, Revenue Collection Officer, Minnesota Department of Revenue, P.O. Box 64447 – JLJ, St. Paul, MN 55164-0447.

There was no appearance by, or on behalf of, taxpayers, Kirk T. and Wade K. Gilbertson, or CRP Ventures, LLC, 195 Robert Street South, St. Paul, MN 55107-1407.

The record closed at the end of the hearing on May 30, 2003.

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of the Minnesota Department of Revenue will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Dan Salomone, Commissioner of the MN Department of Revenue, 600 North Robert Street, St. Paul, MN 55146, to ascertain the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

STATEMENT OF ISSUE

The issue in this case is whether or not the taxpayer has failed to pay sales taxes owed to the Department as required by law, thereby justifying the revocation of taxpayer's sales tax permit.

Based upon all of the files and proceedings herein, the Administrative Law Judge makes the following:

#### FINDINGS OF FACT

1. On April 10, 2003, the Department issued its Notice and Order for Hearing in this matter, setting a hearing for May 15, 2003, in Minneapolis. The Notice alleged that taxpayer had not filed all sales and use tax returns due to the Department, and had not paid the sales and use taxes due to the Department.

2. The taxpayers presently hold Sales Tax Permit #2474479.

3. The Notice and Order for Hearing stated, in bold print, the following:

**The Respondent's failure to appear at the hearing may result in a finding that the Respondent is in default, that the Department's allegations contained in this Notice and Order may be accepted as true, and its proposed action may be upheld. If any party has good cause for requesting a delay of the hearing, the request must be made in writing to the Administrative Law Judge at least five days prior to the hearing.**

4. Well in advance of the hearing, Kirk Gilbertson contacted Administrative Law Judge Kathleen D. Sheehy, and indicated a need for a continuance. She directed him to write her a letter, with a copy to the Department. On May 9, 2003, both Kirk and Wade Gilbertson signed a letter requesting a continuance due to a death in their immediate family. On May 13, 2003, Judge Sheehy sent a letter to the Gilbertsons and to Wayne Sather, continuing the matter from May 15 to May 30, and indicating that because of the change in schedule, the matter would be transferred to the undersigned Administrative Law Judge.

5. On May 30, 2003, there was no appearance by or on behalf of the taxpayers. At that hearing, Collection Officer Jones testified that he had spoken with Kirk Gilbertson the previous afternoon (May 29) to remind him of the time and place for the hearing. Jones testified that Gilbertson told him that both he and his brother Wade would appear. They did not appear at the hearing on May 30.

6. As of May 30, 2003, CRP Ventures, LLC, had failed to file sales and use tax returns for the periods October, November, and December of 2002, as well as January of 2003. The taxpayers had filed a late return for September of 2002, but had not paid the taxes due.<sup>[1]</sup> Taxpayers owe a total of \$12,534.00 in unpaid sales and use tax, plus penalties of \$1,547.79, plus interest of \$349.32, plus \$60.00 for lien filing fees, for a grand total of \$14,491.11.<sup>[2]</sup> These figures are calculated through May 30, 2003.

They do not include a return for April, 2003, which was due on May 20, but which had not been received as of May 30.

7. The allegations and issues set forth in the Notice and Order for Hearing are incorporated herein by reference in their entirety. The Respondents made taxable sales, and by law, are required to collect and remit sales tax to the State of Minnesota.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS**

1. The Commissioner of Revenue and the Administrative Law Judge have authority to consider the issues set out in the Notice and Order for Hearing and to take the action proposed pursuant to Minn. Stat. §§ 297A.07, 297A.86, and 14.50.

2. The Department of Revenue gave proper notice of the hearing in this matter, and has complied with all relevant substantive and procedural requirements of law and rule.

3. The taxpayers are in default, as defined in Minn. Rule Part 1400.6000, as a result of the failure to appear at the hearing. That rule provides that in the event of a default, the allegations of and the issues set out in the Notice and Order for Hearing may be taken as true or deemed proved without further evidence.

4. The taxpayers have failed to pay sales taxes as required by Minn. Stat. § 289A.20 and Minn. Rule Part 81.30.7500.

5. As a result of the failure to pay sales taxes owed to the Department, including penalties, interest, and other charges, reasonable cause does exist to revoke the taxpayer's sales tax permit under Minn. Stat. § 297A.07, 297A.86, and Minn. Rule Part 8130.2700.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

IT IS HEREBY RECOMMENDED that the Commissioner of Revenue revoke Sales and Use Tax Permit No. 2474479 issued to CRP Ventures, LLC, and/or

Gilbertson & Gilbertson dba Riverfront Pizzeria.

Dated this 4<sup>th</sup> day of July, 2003

S/ Allan W. Klein  
ALLAN W. KLEIN  
Administrative Law Judge

Reported: Default

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the Department is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

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<sup>[1]</sup> Exhibit 1.

<sup>[2]</sup> Exhibit 1.